

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

FILED	JUL 21 2009
CLERK, U.S. DISTRICT COURT NORFOLK, VA	

ELISHA REID, #350586,

Petitioner,

v.

CIVIL ACTION NO. 2:08cv501

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction on May 6, 2005, in the Circuit Court of Accomack County, Virginia, for first degree murder, use of a firearm in the commission of a murder, attempted robbery, and felonious vandalism of personal property, as a result of which he was sentenced to serve thirty-five years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Court held an evidentiary hearing on May 21, 2009, and the report of the Magistrate Judge was filed on June 19, 2009 recommending dismissal

of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the magistrate judge. The Court received no response from either party.¹

The Court, having reviewed the record, does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on June 19, 2009, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED as the claims are procedurally defaulted, not cognizable on federal habeas review, and without merit. See, *Turner v Commonwealth of Virginia*, 259 Va. 816 (2000). It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of

¹ On June 29, 2009, Petitioner filed a Motion for Extension of Time to file objections to the Magistrate Judge's Report and Recommendation. Subsequently, on July 9, 2009, Petitioner sent notice to the Court that no objections would be filed. Therefore, Petitioner's Motion for Extension of Time (Document No. 26) is DISMISSED AS MOOT.

appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

/s/ MHD
Mark S. Davis
United States District Judge
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

July 21 , 2009